WORLD'S NEWS CONDENSED FROM THE COAST FILES

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JUDGF. GEAR CHALLENGES WHOLE SUPREME BENCH

(From Saturday's Advertiser) New and strange developments arose in the Higushi habeas corpus case be-Supreme Court yesterday. They are such as to sidetrack, for a time, the "infamous punishment" issue m which that case turns,

Former Judge George D. Gear challenged the jurisdiction of the entire bench of three justices to hear the case, because, according to the Journal of the House of Representatives, they had 'carefully considered and approv lad" a bill that was passed later and as an Act of the Legislature of 1905, ow came before that court to be con-

It turned out, in the discussion that followed that only the Chief Justice was consulted about the bill prior to its passage-and he not to the extent set out in Higashi's affidavit presented by Judge Gear. Yet the court appoint- bias, prejudice, or whatever it was. ed a hearing on the question of the isqualification of Chief Justice Frear. This, it is expected, will elicit a decision upon the general issue of whether judge who has given advice upon pending legislation is disqualified onstrue a law resulting from such legislation.

A more remarkable development of the Higashi case on this occasion was the arriving at common consent to rethe disqualification question as preme Court is not, in the absence of statute, disqualified to sit in a case by reason of having been before his appointment to the bench counsel for one of the parties in the case, even where he has taken an active part in the case and advised upon the questions

Justice Hartwell made the interesting statement yesterday that he was withle an ace of resigning" in connection with that case. It was his disjustification that was in question there, and his concurrence with Justies Wilder it was which made the foregoing deliverance law.

Still another curious phase of the hearing yesterday was the voluntary testimony, relative to their alleged disqualification, which all three members of the court formally tendered. They had already made informal statements of the electronstances in question, but to place the large correctly on the recand they called in the court stenographer and dictated their evidence, THE PROCEEDINGS.

Deputy Attorney General Prosser appeared for the Territory on its appeal from Judge De Bolt's decision releasme Eligashi from imprisonment in Honothin juit under a writ of habeas cotpos, on the ground that he was unawrully sentenced thereto. The ground of the decision was that Act 59 of the WW AVE THINK, "relicting to prisoners other than felone," did not authorimprisonment without hard is minishment for a violation of the garebling law, because the offense was misdemeanor and the law provided Traffic on the Law time in the burie is atspended and Japanese have the penalty of a line of not more than thousand dollars or Imprisonment it hard labor not exceeding one year for misdemeanor. Act 59 is as follows: Section I. No person committed or once as a witness or upon civil or for contempt or upon conviction of thority of law, except upon convicin Onto Prison or subjected to any

infamous punishment. "Section 2. This Ac This Act shall take effeet upon its approval."

Judge Gear, when the Higashi case es reached, stated he had an affidavit of Himshi to present to show that the full benck was disqualified for hearing the appeal. He objected to the juris-

"Thon what grounds?" Chief Justice

going through the Legislature, and on "carefully considered the American statute and discretified and per nerps so reports a diplomat from statute and approved the same." In the Journal of the House a report of Andrade, he further stated, when asked which members of the Supreme Court had considered and approved the fill, answered, "All of them."
"Approved of what?" the Chief Jus-

sever submitted to me and even if it was I don't see anything in that af-

fiducis that would disqualify me." Judge Geer said that, from the statement of the Judiciary Committee, he decined it his solemn duty to raise question. If the statement were

rue that further of that court conits possage, it would be the right of the petitioner to object to the witting f the same Justices in his case involv-

The Chief Justice said he was trying to refresh his memory, but could not resolved in what form the matter was the circumstances of the interview, but he did approve of something like that Act. Yet he did not think it disgood further, the Chief Justice asked form about the court's construction and

Hartwell and he gave an opinion or it, he would heritate before sitting in a case where that law was in gues tion.

Chief Justice Frear said Jegislature in this country and in many states had been in the practice of asking supreme do not remember particularly all with courts for opinions on legislation.

"That system provides a mode of procedure," Judge Gear replied. "It is an ex parte proceeding," the

Chief Justice observed. Judge Gear said the United States Supreme Court would not consider such questions, and it ought to be a good example. He claimed the right of the petitioner to have his case tried by Justices who had not previously rendered a construction of the very law in question.

Justice Wilder wanted to know wha was the definite objection-opinion. Judge Gear answered that he con sidered the report of the House Judiclary Committee would be reason enough on which to base a request for a decision

the Notley case decided that a Justice DB: BRINCKERBOFF'S had no right to withdraw unless it

were shown that he was disqualified. Judge Gear promptly responded that he thought the Notley decision was decided in the Notley will case. It was wrong and that, if an opportunity there held that "a Justice of the Su- arose, the court might reverse itself. He would like to have the point argued in this case. To him that de-

cision was repellant. "The idea was so repellant to me. Justice Hartwell said with much earnestness, "that I was within an ace of resigning from the bench. It was only firm conviction that the law com pelled me to sit in the case which declded me.

Judge Gear remarked that he knew that the members of the bar generally would like to have that question reargued. He once tried a case for two weeks before finding that he was on place. the record as counsel-when he discovered his firm name of Davis & Gear in the pleadings-and all of the attorneys in the case agreed that he

should not sit further.
"You did not give them a chance to say anything," Justice Wilder laughingly corrected. "You just step-

In further conversation Judge Gear admitted that it did not appear from their statements that Justices Hartswell and Wilder were disqualified, and In answer to questions he stated the general merits of the habeas corpus As to the penalty question he cited the Savidge case decision, where that court held that a statutory penalty could not be split up at the discretion of a Judge,

Justice Hartwell said he had no such his opinion justified which Judge Gear mentioned as a reason why no judge should give advice on pending legis-

"That is because of your long legal training," Judge Gear responded. He went on to contend that a bad precedent should not be established. It was immaterial just what was done by any Justice of the Supreme Court when question was submitted to him. The admission of the Chief Justice was some ground on which to test the question.

"Even-if everything Judge Gear has said were true," Mr. Prosser remark-ed, "I do not think it amounts to disqualification." The Deputy Attorney General, having inquired if he was expected to make an argument was told by the Chief Justice that the court would be glad to hear him.

Judge Gear, in reply to the court, said he had closed. Justice Wilder suggested that perhaps he would like to present a more

formal argument. Judge Gear replied by stating the tion in the Notley case," Judge Gear regunds on which the writ of habeas answered, "if the court's mind is not would be glad to discuss the ques-

irrevocably made up." Justice Wilder said he would be glad to hear the question argued again.

Mr. Prosser then wanted to know just what Judge Gear's grounds were, and Judge Gear read the affidavit. He over with great care.

also admitted that the question was also admitted that the question was also admitted that the position of the to proceed carefully, but with all postchief Justice. Mr. Prosser put the sible expediency. Whether an informal opinion of a Justice of the Supreme Court upon an

Act of the Legislature before its passage disqualifies him from afterward sitting to construe such Act?" "That's about it" the Chief Justice

assented. get the basis of objection on the record the court stenographer was called in, when the members of the court dictated voluntary statements as follows (from the Advertiser reporter's COURT'S TESTIMONY

Chief Justice Frear-"According to my recollection I approved Act 59 of the Laws of 1995 before its enactment. To what extent I approved it, or to whom, or when, I do not recollect. do not remember having given it careful consideration, except that I was familiar at that time with the diffi-

other acts, was intended to obviate, because those difficulties had been pre sented at length through argument to the court in previous cases. After Justice Hartwell had made his statement as below, the Chief Justice made the following addition to his own

culties which this Act, together with

statement "I do not recollect having expressed opinion as to the effectiveness of this Act, as to its being sufficient to accomplish its objects, as distinguish-

Justice Hartwell-"I do not recollechaving ever seen the bill. Act 59, before it was enacted, or that I ever expressed any opinion to any person about its validity or legal effect. the Goto case last year, a case in which I sat—a case which became very important-I discussed the necessity of changing our laws in conformity with | apply at the office of the decisions of the United States Su-preme Court. I certainly thought the do not remember particularly all with whom I discussed the matter. I remember saying that legislation ought to be prepared and cover the whole ground, and suggesting the question of whether one bill would not cover the whole ground. I remember seeing Mr. Andrade and Mr. Dickey in the office of the Chief Justice but can not recolect what business they were on. Possibly Mr. Andrade thought I was taking part in the consideration of the

Justice Wilder-"Prior to the enactment of this Act 59 and while I was a member of this court I never considered it carefully or otherwise, either as to the form of the bill or other-wise. I could not have rendered an opinion on the form, as I had never seen it."

Members of the medical fraternity both here and in Honolulu, are interested in the announcement that Sur geon-General Wyman has appointed Dr. Walter R. Brinckerhoff, of New York, director of the proposed govern-ment research hospital in the Hawaiian Islands. The latter is the first government institution of its kind in the world planned on a large scale Congress last year appropriated \$100,-000 for the hospitals, which is to have ecommodation for forty patients and all the modern accessories for such a The director will have ample assistants and nurses, \$50,000 for salaries having been appropriated for the But little of this amount first year. will be used, because the hospital has yet to be built. It will probably be six months before work on it will be well under way. A square mile of land on the island of Molokai as a site for the hospital has been granted by the territory of Hawaii. The plans as be ing prepared call for two buildings one for men patients and the other for women, with a water supply, gas and disinfectant plans, laboratory, storehouses, quarters for nurses and medical staff and an administration building.

It will be the mission of Dr. Brinckerhoff and his associates, under Surgeon-General Wyman, to try to ascertain the origin of the dread disease. feeling of anxious pride about having to grow its bacilli in test tubes and to see if some animal cannot be inoculated with the germs so that the disease can be readily studied in all its phases. - San Francisco Examiner

> MOODY AFTER ROADS ON SUGAR REBATES

WASHINGTON, March 8 .- Upon be ing shown the publication in the York American today regarding the alleged granting of rebates on the transportation of sugar, Attorney General Moody said:

Some weeks ago a representative of that paper called on me and said that information was in the possession of that paper tending to show that large rebates on the transportation of sugar had been given to the American Sugar Refining Company by the trunk lines of railroads running out of New York City, and asking if the Department of Justice desired to use the information in legal proceedings. An examination of the matter showed clearly that it was highly important and tended to show the giving and receiving of large money rebates. The subject was then brought to the attention of Mr. Stimson, who had been selected by the President as District Attorney for the Southern District of New York.

Following this, on the first day of Monday morning at 10 o'clock was February, which was the date of Mr. set for a further hearing on Higashi's Stimson's taking office, a conference was held in New York between the Attorney General, Mr. Purdy, and Stimson, when the evidence was gone

It ought to be said that until this information was furnished the depart ment by the representative of American the department had knowledge or suspicion of the facts and that the representatives of that paper have aided the officials of the partment in all ways within their powers.

Moody said further:

In the department at present the matter is in the stage of investigation. of which names five are those living No determination as to who should be indicted has been arrived at, but full claiming to be agent for land within evidence will be laid before the grand the limit. Three of these men deny jury and it will determine against whom sufficient evidence exists to war. It is claimed that they have appeared rant indictments. It must be remembered that there can be no indictment against any person unless there is specific evidence of his own personal

The District Attorney at New York, under the direction of the Attorney General, will act vigorously, but in the meantime it is no more than fair that judgment be suspended until the whole by the courts.

PRAUD SHOWN IN LICENSE MATTERS

Editor Advertiser: The rostowing are the facts concerning two saloons in na. There has been considerable interest aroused among the people there by opposing petitions for saloons. A man ed from an expression of approval as opposing petitions for saloons. A float to the objects of the bill. On several by the name of Sing Sing, Kainalla, occasions during that session of the Kone, had twenty-four signers of a the first and the banet of Legislature Mr Andrade, chairman of petition in his favor among this number of petition and the favor among this number of the flower. The process of the various torms and also other members of that compressive by law and upon being approached two of the court. If, various bills, which were discussed by they had their eighture acknowledge to force of the court. If, various bills, which were discussed by the process of the signers dony that the was not was thought to further with the process.

Sumburn-Bremen Fire insurance Co

The undersigned having been pointed agents of the above company are prepared to insure risks against dre on Stone and Brick Buildings and on Merchandise stored therein on the nost favorable terms. For particulars

F. A. SCHAEFER & CO., Asta.

North German Marine Insur'ce Co. OF BERLIN. Fortuna General Insurance Co. OF BERLIN.

The above Insurance Companies have stablished a general agency here, and the undersigned, general agents, are authorized to take risks against the dangers of the sea at the most reason-able rates and on the most favorable

F. A. SCHAEFER & CO., General Agents

General Insurance Co. for Sea River and Land Transport of Dresden.

Having established an agency at Hopolulu and the Hawaiian islands, the undersigned general agents are authorised to take risks against the dangers of the sea at the most reasonable rates and on the most favorable terms.
F. A. SCHARFER & CC.,

Agents for the Hawalian Islands UNION PACIFIC

It was the Route in '49! It is the Route today, and Will be for all time to come.

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these appeared before Mr. Mills July 8, 1995, and were identified upon oath of D. N. Kilinahe.

Another saloon man by the name of T. Shibayama, Kealakekua, Kona, tained eight signatures on his petition outside the limit-one of them only acknowledging their signature and yet before David K. Baker September 29, 1905. It is noteworthy that this same Shibayama is an applicant for another saloon at Holusion too. It would seem as though no petition in his favor should be allowed to stand as warrant

for the new plea. Treasurer Campbell has been notifled of these facts and the claim has been made that these facts when verimatter has been investigated and tried fied are sufficient to warrant the revoking of the licenses and should effect the standing of the notary public in question. It is desired that large publicity be given to such fraudulent

methods of securing saloons THEODORE RICHARDS. Chairman H. B. TURNER,

Secretary Committee of Autications League. Honolulu, T. H., March 22, 1906.

At the Christian Endeavor raily at Kawaiahao church on Priday. "The kanko Mission Choir and not the Re-Lauko Gire Ciub.